

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2002- 676

Re: MAINE PUBLIC SERVICE COMPANY,  
Request for Approval of Reorganization of the  
Company into a Holding Company Structure

STIPULATION

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**A. Introduction and Procedural History.** On November 1, 2002, Maine Public Service Company (“MPS,” “Maine Public,” “the Company”) filed an Application seeking, *inter alia*, authority to reorganize into a holding company structure. Central Maine Power Company (“CMP”) and the Office of the Public Advocate (“OPA”) filed Petitions to Intervene, and Bangor Hydro-Electric Company filed a Petition to Intervene as an interested party. All such petitions were granted.<sup>1</sup>

On December 23, 2002, the Commission, acting pursuant to Section 708<sup>2</sup> (the “Reorganization Statute”) issued an Order permitting MPS to form HoldCo, the entity that will eventually become the holding company in the newly-reorganized entity, and MergeCo, an entity formed for the sole purpose of accomplishing the merger that will establish the reorganized corporate structure. The Commission permitted the formation of these entities so as to enable MPS to proceed with its federal approvals and with the understanding that both entities would be dissolved in the event that the Commission declined to give its consent to the proposed reorganization. HoldCo and MergeCo will be formed in connection with the contemplated reorganization.

In accordance with Procedural Orders entered by the Hearings Examiner, MPS filed responses to Examiner and OPA Data Requests on December 24, 2002. Certain of these responses were filed pursuant to the Hearings Examiner’s Protective Order entered on December 20, 2002.

On December 27, 2002, MPS filed an amendment to its Application regarding the scope of the Reorganization Statute exemption sought by the Company. As amended, the exemption granted to MPS would be largely congruent with that granted to CMP in *Central Maine Power Company, et al., Request for Waiver from the Reorganization Approval Requirements in 35-A MRSA Section 708*, Docket No. 2001-447, Order dated December 20, 2001 (the “2001 CMP Order”).

Following a Technical Conference held on January 8, 2003, the Examiner and the OPA issued a second series of Data Requests on January 13, 2003. MPS provided responses to these Data Requests, as well as certain oral Data Requests issued in the course of the January 8

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<sup>1</sup> CMP intervened on the basis that it might be affected by any substantial change to the State’s transmission grid, and only for the limited purpose of receiving filings and potentially filing a brief. Neither BHE nor CMP have filed briefs or otherwise actively participated in the proceedings. BHE and CMP are not asked to join in this Stipulation.

<sup>2</sup> Unless otherwise noted, all statutory references are to Title 35-A, MRSA.

Technical Conference, on January 17 and 21, and a Status Conference was held on January 21, 2003. In line with requests made at the January 21 Status Conference, MPS supplemented a Data Response on January 31, 2003.

Thereafter, the parties and the Hearings Examiner held a settlement conference on February 12, 2003, and the parties have now arrived at a Stipulation, embodied herein, which, if accepted by the Commission, will fully and finally dispose of all matters raised in this Docket. The parties therefore jointly recommend that the Commission accept and adopt this Stipulation as its final disposition of this case.

## **B. Stipulation.**

The parties hereby agree as follows:

**1. Description of Transaction.** HoldCo has been formed with an authorized capital stock of 5 million shares of common stock and 500,000 shares of preferred stock. HoldCo issued 100 shares of its common stock to MPS upon its formation. MergeCo has been formed with an authorized capital stock of 1,000 shares of common stock, of which 100 shares was issued to HoldCo at the time MergeCo was formed.

At such time as all regulatory, non-regulatory and shareholder approvals for the transaction have been obtained, the Company, HoldCo and MergeCo will enter into an Agreement and Plan of Merger substantially in the form filed as Exhibit 1 to Maine Public's Application (the "Merger Plan"). Under the Merger Plan,

- a. MergeCo will merge into MPS, with MPS being the surviving corporation. On the filing of the Articles of Merger with the Maine Secretary of State or on the date specified in the Articles of Merger (the "Merger Date"), MergeCo will cease to exist.
- b. On the Merger Date, each outstanding share of MPS's common stock (excluding shares held by dissenting shareholders who have complied with the requirements of Maine corporate law<sup>3</sup>) will be exchanged by operation of law<sup>4</sup> into one share of HoldCo common stock. Holders of MPS common stock before the merger will automatically become holders of HoldCo common stock, holding the same number of shares, and will cease to be owners of the Company's stock
- c. Also on the Merger Date, the outstanding shares of MergeCo common stock (to be held by HoldCo) will, as a result of the merger of MergeCo into MPS with MPS as the surviving corporation, be converted by operation of law<sup>5</sup> into a number of shares of the common stock of the Company equal to the number of shares of the Company's common stock outstanding immediately prior to the

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<sup>3</sup> See 13-C M.R.S.A. § 1322, as effective July 1, 2003 pursuant to Chapter 640 of the Public Laws of 2001 (new Title 13-C is hereinafter referred to as the "RBCA").

<sup>4</sup> See RBCA § 1107, I.H.

<sup>5</sup> See note 3 above.

share conversion described in part b. above, which will be deemed issued by the Company for this purpose.

- d. Each share of HoldCo common stock outstanding before the Merger Date (*i.e.*, the stock which was issued to MPS when HoldCo was formed) will be cancelled by HoldCo.

Because the MergeCo shares converted to MPS shares will be the same shares originally issued to HoldCo, the merger of MergeCo into the Company will result in the Company becoming a subsidiary of HoldCo.

At the closing on the above-described merger, MPS will dividend its interest in its wholly-owned competitive energy provider, Energy Atlantic, LLC, to HoldCo, but will retain its 100% ownership interest in Maine and New Brunswick Electrical Power Company, Ltd., a wholly-owned corporation organized under the laws of Canada (“M&NB”). M&NB, which formerly owned the Tinker hydro-electric generating facility, will remain inactive, and MPS will wind up and dissolve M&NB at such time as MPS deems appropriate.

Completion of the corporate reorganization is subject to shareholder<sup>6</sup> and regulatory approvals, listing of HoldCo’s common stock on the American Stock Exchange, and a satisfactory tax ruling or opinion with respect to the tax consequences of the transaction. As of the Merger Date, the common stock of HoldCo will be listed on the American Stock Exchange and the common stock of the Company will no longer be listed on an exchange since it will be owned entirely by HoldCo.

Maine Public currently guarantees EA’s obligations, up to a specified amount, under a wholesale power agreement (the “EA Guarantee”). If this guarantee is still operative as of the Merger Date, it will be transferred to HoldCo, or otherwise disposed of, and MPS shall be discharged.

Maine Public plans to close on the reorganization on July 1, 2003 (*i.e.*, July 1, 2003 is the proposed Merger Date).

As of the Merger Date, the new corporate organization will include HoldCo, a non-operating holding company of which MPS will be a subsidiary, with all of MPS’s common stock outstanding being held by HoldCo. Maine Public will continue to own all of the voting securities of M&NB and HoldCo will own EA outright. The Company’s existing debt securities will remain as outstanding securities of the Company. After the Merger Date, the Company will continue to finance its business operations by issuing its own debt (secured and unsecured) and, if necessary, through equity infusions from HoldCo. The proceeds of securities issuances by the Company will be used exclusively for its electric utility business, and Commission approval will be required for any new issuances of long-term (and/or secured) debt or equity securities by the Company. Maine Public will continue to provide transmission and distribution service to its customers after the Merger Date, subject to Commission regulation and control, retaining

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<sup>6</sup> The Company intends to present the proposed corporate reorganization to the shareholders at its 2003 Annual Meeting of Shareholders, scheduled for May 13, 2003.

virtually all of its assets.<sup>7</sup> Meanwhile, all *non-de minimis* non-core business activities will be carried on through subsidiaries formed by HoldCo or by entities in which HoldCo has an equity interest.

On the Merger Date, certain MPS employees, principally senior managers, will be transferred to HoldCo. Under the Management and Support Services Agreement (“MSSA”) submitted by MPS for approval in this Docket, the services of individuals transferred to HoldCo will continue to be available to MPS. In addition, HoldCo will be able to obtain services from MPS, such as accounting and information technology services, again subject to the MSSA. Where applicable, charges for such services shall be determined by reference to the Cost Manual for Non-Regulated Business Activities (the “Cost Manual”) filed by MPS, as described in the Prefiled Direct Testimony of Larry E. LaPlante, Maine Public’s Vice President, Treasurer and Chief Financial Officer, and Kurt Tornquist, Vice President, Corporate Performance and Development.

**2. Conditions.** The parties recommend that the Commission (a) establish the following conditions for its approval of the proposed reorganization, and (b) find that, with these conditions in place, the proposed reorganization will be consistent with the interests of Maine Public’s ratepayers and investors within the meaning of subsection 2(A) of the Reorganization Statute.

- (1) Access to books and records. The Commission will continue to have reasonable access to books, records and documents of MPS, of HoldCo, and of non-utility affiliates in which HoldCo directly or indirectly holds a majority interest. HoldCo will use its best efforts to produce books, records and documents of non-utility affiliates in which HoldCo has less than a majority interest. As set forth in Condition 4 below, any Commission inspection of non-utility materials shall be subject to reasonable and appropriate protective measures as needed.
- (2) SEC filings. HoldCo shall provide the Commission with its annual, quarterly, current and transitional reports filed pursuant to Section 13 and 15(d) of the Securities and Exchange Act of 1934, at the same time it files those reports with the Securities and Exchange Commission.
- (3) Financial statements. To the extent not covered by Item (2), HoldCo will provide to the Commission quarterly and annual financial statements. The annual consolidated balance sheets of HoldCo and its subsidiaries will be certified by an independent public accountant.
- (4) Confidentiality. The Commission will afford all appropriate protections, including the issuance of protective orders, for the business, financial and proprietary information designated by HoldCo or any of its affiliates as confidential.

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<sup>7</sup> MPS will retain title to its interests in the Maine Electric Power Company and the Maine Yankee Atomic Power Company.

- (5) Loans and liabilities. MPS will not make any loan to, or guarantee or assume any obligation of, HoldCo or any of its affiliates without prior Commission approval.
- (6) Reorganization costs. All costs arising from the reorganization of the Company to a holding company system will be borne by shareholders.
- (7) Dividend policy. The Commission will not place additional restrictions, in advance, on the dividend policy of MPS. The Board of Directors of the Company will continue to set dividend policy for the Company with due regard for the financial performance, needs and health of the Company and the maintenance of a safe, efficient and reasonable capital structure. Commencing on July 1, 2003, if at any time MPS's common dividend payout ratio (dividends per share divided by earnings per share) exceeds 1.0 (i.e. 100%) on a two year rolling average basis, MPS shall notify the Commission in writing within thirty (30) days of the end of the calendar quarter (assuming a dividend is paid on July 1, 2003, the initial two year period shall be April 1, 2001 through March 31, 2003).<sup>8</sup> The required notification should explain the circumstances (extraordinary or not) of this event and the financial condition of MPS. Moreover, the Commission reserves the right in the future, should financial circumstances warrant, to impose limitations on the dividend policy of MPS, the regulated transmission and distribution company.
- (8) Utility securities (debt or equity) issuances. Securities issuances by the Company will be done independently of HoldCo and subject to such Commission approvals as required. The proceeds of any securities issued by the Company will be used exclusively by the Company for its business.
- (9) Prior Commission Orders. As a result of the protections inherent in the holding company structure and the conditions set forth herein, the parties believe the ratepayers will be adequately protected from the financial and business risks and costs of non-utility activities; therefore, the ratemaking caps and presumptions established in Maine Public Service Company, Re: Request for Approval of Reorganization, Docket 98-138, Order dated September 2, 1998 (the "EA Order") (at 5-6) are removed. The Commission in Docket No. 98-138 a) amended by the Commissions Order in *WPS Energy Service, Inc., Complaint Requesting Commission Action to Amend or Alter Commission Order of September 2, 1998 in Docket No. 1998-138 and Determine Whether Maine Public Service Co. and/or Energy Atlantic has Violated the Requirements of the Order of the Provisions of Chapters 301, 304 or 322*, Docket No. 2000-894 (April 29, 2002), granted certain conditional exemptions to MPS and EA of the employee sharing prohibitions of Chapter 304. On February 21, 2003, MPS announced that it intended to exit the Northern Maine market and requested an exemption from the requirements of Chapter 304. *Maine Public Service Company, Application for Exemption of Chapter 304*, Docket No. 2003-122. The parties agree that the issue of whether

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<sup>8</sup> The parties recognize that at such time as MPS's payment obligations under the Wheelabrator-Sherman PPA agreement end in 2006, the MPS board may consider it prudent to maintain a reasonable capital structure by increasing the dividend, which may yield a payout ratio in excess of 100%.

the conditions of exemption set forth in the Commission Orders in Docket Nos. 1998-138 and 2000-894, including the question of whether such conditions if found to be appropriate should be at the MPS level or be transferred up to HoldCo should be considered in Docket No. 2003-122 and that this Stipulation does not constitute an agreement of conditions of employee sharing established in Docket Nos. 98-138 and 2000-894.

- (10) Methodology for Determining Cost of Capital. Maine Public's cost of capital shall, following the closing on the reorganization, be determined based on the "divisional cost of capital" approach, without making a "double leverage" adjustment, as discussed in Central Maine Power Company, Re: Application for Approval of Reorganization, Maine PUC Docket No. 97-930, Order dated May 1, 1998 at 5-6.
- (11) Discharge of EA Guarantee. MPS shall be discharged of the EA Guarantee.
- (12) Investment Level. HoldCo's total non-utility investment, excluding accumulated unregulated retained earnings, shall not exceed fifty million dollars (US\$50,000,000) and such amount shall exclude retained earnings from Energy Atlantic, LLC., provided that MPS may at any time seek an enlargement of this limitation for good cause shown.
- (13) Pledge or Transfer of Common Stock. Without prior Commission approval, HoldCo will not sell, pledge or otherwise transfer any common stock of the Company.
- (14) Common Equity Ratio. To protect and maintain the financial integrity of the regulated T & D utility, MPS and HoldCo agree to maintain the common equity ratio of MPS at a level of not less than forty eight percent (48%) of the total capital at all times, provided that the Commission may establish, for good cause shown, a lower ratio in connection with its authorization of a future debt issuance proposed by MPS. Total capital is defined as the sum of the following components: common equity, preferred equity, long-term debt, current maturities long-term debt (CMLTD), long-term capital leases, current maturities long-term capital leases, and short-term debt.
- (15) Testimony. On the reasonable request of the Commission, HoldCo will direct any employee or officer of HoldCo or any subsidiary of other affiliate in which HoldCo directly or indirectly holds a majority interest to appear before the Commission for the purpose of giving testimony.
- (16) Tax Effects. During the course of this proceeding MPS has represented that the proposed reorganization will not result in any negative tax consequences for MPS. To the extent that any such negative tax effects occur, MPS ratepayers will not bear any of the costs of such negative tax effects.

- (17) The aforementioned conditions have been developed with the understanding that ratepayers will not be subject to additional costs that may result from the reorganization and any investments that HoldCo may make in unregulated entities pursuant to the provisions of Section 3 (g)(2). As set forth in 35-A M.R.S.A. §708(2-a), approval of this reorganization does not limit or restrict the Commission powers in determining and setting MPS's rates or charges. The parties believe that this reservation as well as conditions set forth above should adequately protect ratepayers from harm. The parties recognize that as a last resort the Commission may, pursuant to the provisions of 35-A M.R.S.A. §708(2)(A)(8), after notice and an opportunity to be heard, order divestiture of MPS by HoldCo upon a determination that no other available remedy is adequate to reasonably protect ratepayers from harm.

The parties agree that adoption of these conditions will be consistent with the interests of Maine Public's ratepayers and investors and recommends that the Commission adopt them.

**3. Approvals.** The parties recommend that the Commission grant the following specific approvals:

- a. the conversion and exchange of all of the outstanding shares of the Company's common stock into an equal number of shares of HoldCo's common stock (to the degree that the conversion and exchange of MPS stock to be effected in that transaction is deemed to constitute an issuance of utility stock within the meaning of Sections 901 and 902);
- b. the merger of MergeCo into the Company, with the Company as the surviving corporation, and the resulting conversion of the outstanding shares of MergeCo common stock into a number of shares of the common stock of the Company equal to the number of shares of the Company's common stock outstanding immediately prior to the share conversion described in item a. above, which will be deemed issued by the Company for this purpose (Section 708, 901 and 902);
- c. the dividend by Maine Public of its limited liability company interest in Energy Atlantic to HoldCo (Sections 708, 910(B));
- d. the execution, delivery and use of the Managerial and Support Services Agreement and the Cost Manual with respect to services provided by MPS and its affiliates to each other (including the use of an average overhead rate<sup>9</sup>) (Section 707) (by approving the MSSA, the Commission conditionally waives Chapter 820(4)(E) of the Commission's Rules to allow MPS affiliates to charge MPS using a fully distributed cost methodology for the provision of services when the affiliate does not otherwise provide services to non-affiliates and there exists no

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<sup>9</sup> MPS revised and resubmitted the Managerial and Support Services Agreement and MPS Cost Manual to reflect the modifications referred to in its responses to data requests 1-Examiner's-51, 1-Oral DR 3 and 4. This approval effectively modifies the requirement, in the EA Order, that individual overhead rates be developed in setting charges for work provided among MPS affiliates.

readily available market rate, subject to the MSSA provisions requiring reporting thereof to the Commission)<sup>10</sup>;

- e. the winding up and dissolving of M&NB at such future time as MPS might deem appropriate (Section 708).
- f. the transfer, after the Merger Date, (i) of assets that are not “necessary or useful,” within the meaning of Section 1101, from MPS to any MPS affiliate, and (ii) the transfer of all other assets from MPS to HoldCo or any non-MPS HoldCo subsidiary in the total amount of \$150,000 per year up to a total of \$450,000 over the three-year period beginning upon the Merger Date. MPS shall report to the Commission any such transfer wherein the asset or group of assets exceeds \$20,000 in value. The transferee entity shall pay to MPS the market value of the asset at time of transfer. No assets that are specific and unique to the conduct of Maine Public’s transmission and distribution business may be transferred pursuant to the authority granted herein; provided that the foregoing shall not be construed as restricting the transfer of any property excluded from the Company’s rate base by Commission order (including the property owned by MPS in connection with the Haynesville Woods right-of-way). Prior to the expiration of the above-noted three-year period, MPS may apply for a further extension of this asset transfer authority. Transfers of assets beyond the scope specified herein are prohibited without express Commission approval.
- g. the partial exemption of MPS from the Reorganization Statute on terms generally consistent with that granted to Central Maine Power Company in *Central Maine Power Company, et al., Request for Waiver from the Reorganization Approval Requirements in 35-A MRSA Section 708*, Docket No. 2001-447, Order dated December 20, 2001 (the “CMP Order”), as specified below:
  - 1. Except as provided in subsection 2 below, the reorganization of MPS and all entities which presently or in the future are affiliated interests (as defined in Section 707) of MPS shall be exempt from the requirements of the Reorganization Statute (and similar successor statutes).
  - 2. The following restructurings (as defined below) shall remain subject to the Commission approval requirements of the Reorganization Statute:
    - (i) a restructuring of MPS itself;
    - (ii) a restructuring of a subsidiary of MPS;
    - (iii) a restructuring resulting in the creation of an affiliated interest of MPS where it is intended that the affiliate will either enter into a contract or arrangement to furnish services or goods to be used by MPS, or perform activities formerly or simultaneously performed by MPS;

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<sup>10</sup> Provided however that MPS shall seek prior Commission approval in the event an affiliate intends to charge MPS for services or facilities on a basis other than the MPS Cost Manual and Chapter 820.



- (iv) a restructuring of HoldCo; and
- (v) a restructuring resulting in the creation of an affiliated interest of MPS where it is intended that the affiliate will act as a competitive energy supplier in Maine as that term is defined by 35-A MRSA Section 3201(5).
- (vi) a restructuring resulting in the creation of an affiliated interest that owns or intend to own generation assets whose ownership would be prohibited under the provisions of 35-A M.R.S.A. Section 3204 if owned by MPS directly.

3. The exemption created by subsection (1) above shall be subject to prospective termination or limitation upon Commission order, after notice and an opportunity for hearing.

4. The limited exemption to be created by subsection 1 applies only to the requirement of the Reorganization Statute that the Commission approve reorganizations. The exemption does not apply to the requirements in Section 707(3) that a public utility obtain Commission approval to extend or receive credit or to make or receive a loan to or from an affiliated interest or to make any contract or arrangement for the furnishing of management, supervision of construction, engineering, accounting, legal, financial or similar services, or to furnish any service or real or personal property other than those enumerated in Section 707(3) with any affiliated interest, or to any other provision of Title 35-A. The Commission shall retain its powers under Section 707(2) to inspect books, accounts and records of MPS and or of an affiliated interest that relates, directly or indirectly, to transactions between MPS and an affiliated interest.

5. HoldCo and MPS shall ensure that no restructuring undertaken by MPS, HoldCo, or any subsidiary of either MPS or HoldCo, either individually or in the aggregate, materially impairs the ability of MPS to obtain capital on reasonable terms.

6. It shall be a condition of the granting of the exemption described in Subsection (a) that HoldCo and its affiliates shall not take any action pursuant thereto that materially impairs the ability of MPS to obtain capital on reasonable terms.

7. As already set forth in Section 2.3 of this Stipulation as a general condition of approval of the currently-proposed reorganization, HoldCo shall provide the Commission with its annual, quarterly, current and transitional reports filed pursuant to Section 13 and 15(d) of the Securities and Exchange Act of 1934, at the same time it files those reports with the Commission.

8. For the purpose of these subsections, a “restructuring” of MPS means the creation, consolidation, merger, liquidation, transfer of ownership or control,

dissolution or termination, in whole or in part, of MPS, or any entity described in subsections 2(b) or (c) above, accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of 10% or more of MPS' or the other entity's voting securities by one person or two or more persons acting in concert. With respect to HoldCo, a "restructuring" means the consolidation, merger, liquidation, transfer of ownership or control, dissolution or termination, direct or indirect, in whole or in part, of HoldCo, accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of 10 % or more of the voting securities of HoldCo by one person or two or more persons acting in concert.

9. Notwithstanding the foregoing MPS shall be entitled to dissolve, and wind up the affairs of, M&NB at such time as it may deem appropriate.

#### **4. Standard Stipulation Provisions.**

1. Purpose; Rejection of Portion Constitutes Rejection of Whole. The parties are entering into this Stipulation for the purpose of finally disposing of all issues raised in this Docket. If the Commission does not accept the entire Stipulation without material modification, then the Stipulation shall be null and void, and will not bind the parties in this proceeding.

2. No Precedent. The making of this Stipulation by the parties shall not constitute precedent as to any matter of fact or law, nor, except as expressly provided otherwise herein, shall it foreclose any party from making any contention or exercising any right, including the right of appeal, in any other Commission proceeding or investigation, or in any other trial or action.

3. Examiner's Report. The parties agree to waive the provisions of § 752 (b) of the Commission's Rules of Practice and Procedure, requiring that any Examiner's Report be in writing and that the parties be afforded an opportunity to file exceptions or comments thereon. The parties thereby intend to permit the Advisors either to provide an oral Examiner's Report to the Commission at the deliberative session to be held in this Docket, or, if the Advisors so wish, to provide a written Examiner's Report to the Commission with the parties waiving the right to file exceptions or comments thereto.

IN WITNESS WHEREOF, the parties have caused this Stipulation to be executed and delivered, or have caused their lack of objection to be noted, by their respective attorneys.

MAINE PUBLIC SERVICE COMPANY

Dated: \_\_\_\_\_

By: \_\_\_\_\_

OFFICE OF THE PUBLIC ADVOCATE

Dated: \_\_\_\_\_

By: \_\_\_\_\_